IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2466 OF 2007

Rajesh B. Gosar ..Petitioner.
Vs.
The Thane District Central Co-op. Bank Ltd. & Ors. ..Respondents.

Mr.S.K.Shinde, adv. for the Petitioner.
Mr.S.P.Thorat, adv. for the Respondent No.1.

CORAM : J.H.BHATIA, J.
DATE : JULY 13, 2007.

P.C.

1. Rule.

2. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing.

3. Heard Mr.Shinde the learned counsel for the Petitioner and Mr.Thorat the learned counsel for the respondent no.1-Bank. The Respondent no.2 is a principal borrower and the petitioner as well as the respondent nos.3 and 4 are the guarantors for repayment of loan taken by the respondent no.2 from the respondent no.1-bank. In a dispute filed by the respondent no.1-bank, award was passed on 7th August, 2006. The present petitioner preferred an appeal against the said award alongwith application for condonation of delay of 119 days in preferring the appeal. After hearing the parties, the learned

President, Co-operative Appellate Court allowed the application and condoned the delay subject to payment of 50% of decretal amount till 15th February, 2007. Being aggrieved by the condition of depositing 50% of the decretal amount, the petitioner has preferred this petition under Article 227 of the Constitution of India.

4. The learned counsel for the petitioner rightly pointed out that the application for condonation of delay in filing the appeal has to be decided on its own merits in view of the provisions of Order 41 Rule 3(A) of the C.P.C. Sub-rule 3 of Rule 3A provides that where such an application for condonation of delay is made under Sub-rule (1), the Court shall not make order for stay or execution of decree against which appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal. Conditions if any, may be imposed while passing the order on application for stay to the execution of decree. In fact, this was not an application for stay to the execution of the impugned decree. This was only an application for condonation of delay. The fact that the Appellate Court allowed the application itself indicates that there were sufficient reasons for condonation of delay. If it is so, application should have been straight way allowed. Whether to impose any

condition or not at the time of granting stay to the execution of decree could be considered as and when appeal is taken up for admission under Order 41 Rule 11 or for hearing on the application for stay on the execution of decree. I am satisfied that the impugned condition can not be supported and sustained.

5. Therefore, petition is allowed. Impugned direction to deposit 50% of the decretal amount as a condition for condonation of delay stands set aside.

6. Rule made absolute accordingly.

[J.H.BHATIA, J.]